

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MUNICIPALITY OF SAN SEBASTIAN,

Plaintiff

v.

CIVIL 14-1136 (FAB)

COMMONWEALTH OF PUERTO RICO,

Defendant

MAGISTRATE JUDGE REPORT AND RECOMMENDATION

I. BACKGROUND AND ARGUMENT

The plaintiff, the Municipality of San Sebastián, filed a complaint on February 19, 2014 (Docket No.1), followed by an amended complaint on May 18, 2014 (Docket No. 9) against the Commonwealth of Puerto Rico, its governor Alejandro García Padilla, the Department of Labor and its Secretary Vance Thomas alleging violations of the First and Fourteenth Amendments of the United States Constitution. The action is brought under 42 U.S.C. § 1983, which provides the basis for a civil action for deprivation of rights secured by the Constitution and laws.

According to plaintiff, Law 52 of August 9, 1991, P.R. Laws Ann. tit. 29, § 21, provides a fund to combat unemployment in Puerto Rico. (Docket No. 1, pp. 3-4) under which for the last ten years the Department of Labor had disbursed a total of \$300,000 annually to the Municipality of San Sebastián to attend its

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3 17.9% of unemployment. Since the current administration of Governor García
4 Padilla came into office, this amount has been significantly reduced to only
5 \$69,981 for the fiscal year of 2013-2014, while the Municipality of Rincón received
6 a total of \$176,998 in funds, although it has a lower unemployment rate (15.7%)
7 and a lower population. Plaintiff argues that the reason behind the discrepancy
8 is the fact that the mayor for the Municipality of Rincón is from the same political
9 party as the current administration, the Popular Democratic Party (PPD); while the
10 Municipality of San Sebastián's mayor belongs to the opposing party, the New
11 Progressive Party (PNP). (Docket No. 1, Data Table pp. 4-7).

12 Plaintiff states that the defendants' actions have no relation to the purposes
13 of Law 52, and that they were made under color of state law in violation of 42
14 U.S.C. § 1983. Arguing political discrimination (Docket No. 1, pp. 9-11), plaintiff
15 is basing its claim under the Due Process and Equal Protection Clauses of both the
16 United States and the Puerto Rico Constitution, and a claim under the First
17 Amendment of the United States Constitution. (Docket No. 1, pp. 11-12)

18 Plaintiff is seeking a determination from the Court acknowledging that it has
19 been politically discriminated against, an order prohibiting the defendants to do
20 so in the future and a permanent injunction compelling defendants to provide the
21 Municipality of San Sebastián the same amount in funds it has received over the
22 past ten years, equal to \$300,000. (Docket No. 1, pp. 11-12)

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4 Under Fed. R. Civ. P.12(b)(1), on April 28, 2014 (Docket No. 5) and then
5 again on June 6, 2014 (Docket No. 11)¹ the defendants presented a motion to
6 dismiss, based on a lack of standing from the plaintiff to bring forth a cause of
7 action under 42 U.S.C. § 1983, since the statute was not designed to allow
8 political sub-divisions of a state to seek redress in the federal court for allegations
9 of discriminatory practices committed by the State. (Docket No. 5, pp. 7-13).

10 On July 7, 2014 (Docket No. 15), plaintiff filed a Response to Motion to
11 Dismiss stating that the defendants did not challenge any factual jurisdictional
12 allegations, but rather the legal validity of the allegations in regards to Municipal
13 standing. In response, plaintiff details the autonomous powers conferred to them
14 by the state, citing local law P.R. Laws Ann. tit. 21, § 4003, granting them
15 "independent capacity, separate from the central government" (Docket 15, pp. 2-
16 3). They claim federal courts have allowed Municipalities to make claims against
17 the state based on substantive and procedural due process violations, as well as
18 in regards to governmental discrimination (Docket No. 15, pp. 4-5). On July 17,
19 2014 (Docket No. 18) the defense filed a Reply to Response claiming that plaintiff
20 failed to address the specific jurisdictional provision at the core of the complaint
21 and relied on local state law that has no relevance in a federal district court
22 (Docket No. 18, pp. 1-2). Basing its arguments on federal principles, the defense
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28 ¹ Following plaintiff's filing of amended complaint.

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notes that the correct redress for the plaintiff's claims would be a mandamus in a local court and not a procedure before federal courts (Docket No. 18, pp. 2-5).

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For the reasons set forth below, I recommend that the motion to dismiss filed by defendants be granted.

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II. STANDARD OF REVIEW

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"A defendant may move to dismiss an action against him for lack of federal subject-matter jurisdiction or for failure to state a claim upon which relief can be granted." Benítez-Navarro v. González Aponte, 660 F. Supp. 2d 185, 188 (D.P.R. 2009), citing Fed. R. Civ. P. 12(b)(1); Fed. R. Civ. 12 (b)(6). In Collazo-Rosado v. University of Puerto Rico, 775 F. Supp. 2d 376, 380 (D.P.R. 2011), "[w]hen considering a motion to dismiss, the Court's inquiry occurs in a two-step process under the current context-based 'plausibility' standard established by [Bell Atlantic Corp. v.] Twombly, 550 U.S. 544, 127 S. Ct. 1955 (2007), and [Ashcroft v.] Iqbal, 556 U.S. 662, 129 S. Ct. 1937 (2009).]" The court must accept all of the complaint's factual allegations as true and find that the complaint states a plausible claim for relief. Collazo-Rosado v. University of Puerto Rico, 775 F. Supp. 2d at 380. "A motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(1) is subject to similar standard of review as a motion brought pursuant to Rule 12(b)(6)." Boada v. Autoridad de Carreteras y Transportación, 690 F. Supp.2d 382, 384 (D.P.R. 2010) (citing Negrón-Gaztambide v. Hernández-

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3 Torres, 35 F.3d 25, 27 (1st Cir. 1994). 'When a district court considers a Rule
4 12(b)(1) motion, it must credit the plaintiff's well-pled allegations and draw all
5 reasonable inferences in the plaintiff's favor.' Merlonghi v. U.S., 620 F.3d 50, 54
6 (1st Circ. 2010) (citing Hosp. Bella Vista, 254 F.3d at 363)." Federal Deposit Ins.
7 Corp. v. Estrada-Rivera, 813 F. Supp.2d 265, 267 (D. P. R. 2011).
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10 When faced with a motion to dismiss for lack of subject matter jurisdiction,
11 the plaintiff has the burden to demonstrate such jurisdiction exists and that it is
12 not insubstantial or implausible or "devoid of merit as not to involve a federal
13 controversy". Rivera-Carrión v. U.S. 634 F. Supp.2d 217, 2009 (D. P. R. 2009),
14 citing Oneida Indian Nation of N.Y. v. County of Oneida, 414 U.S. 661, 666, 94 S.
15 Ct. 772 (1979).
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18 III. ANALYSIS

19 Plaintiff is basing its claim on a violation under 42 U.S.C. § which provides
20 that:
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22 Every person who, under color of any statute, ordinance,
23 regulation, custom, or usage, of any State or Territory or the
24 District of Columbia, subjects, or causes to be subjected, any
25 citizen of the United States or other person within the
26 jurisdiction thereof to the deprivation of any rights, privileges,
27 or immunities secured by the Constitution and laws, shall be
28 liable to the party injured in an action at law

42 U.S.C. § 1983

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3 The statute,² as first intended by Congress, was a means through which the
 4 federal government, through its courts, could intervene on behalf of people
 5 suffering from their local states' disregard of their constitutional rights.³ ". . . §
 6 1983 does not create independent substantive rights but, rather, supplies a
 7 vehicle by which a plaintiff may sue government actors acting under color of state
 8 authority who have deprived him or her of a constitutional or statutory right."
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 10 Milinelli-Freytes v. University of Puerto Rico 727 F. Supp.2d 60, 64 (D.P.R. 2010);
 11 see also Gonzaga University v. Doe 536 U.S. 273, 285, 122 S. Ct. 2268, 2276
 12 (2002)).⁴ The Municipality's apparent view is that it has standing because its
 13 constitutional rights under the Due Process and Equal Protection Clauses of the
 14 Fourteenth Amendment of the United States Constitution have been violated by
 15 persons acting under color of state law, thus activating 42 U.S.C. § 1983.

16 ²This statute is part of the Civil Rights Act of 1871, created after the Civil
 17 War, as a method to ensure state compliance with the protections the federal
 18 government had extended to all citizens with the inclusion of the Thirteenth and
 19 Fourteenth Amendment into the United States Constitution. See Steinglass, Steven H.. Section 1983 Litigation in State Courts § 2:2 (2012). By enacting the
 20 Civil Rights Act, and its statute 42 U.S.C. § 1983, Congress intended to force
 21 states to actively protect the constitutional rights of their citizens and to make
 22 them accountable for failing to provide equal protection under the law, as
 23 demanded by the Fourteenth Amendment. See Rotell, Gloria Jean, Paying the
 24 Price: It's Time to Hold Municipalities Liable for Punitive Damages under 42 U.S.C. § 1983 10 J. L. & Pol'y 189, 194-95 (2001).

25 ³Steinglass, supra.

26 ⁴". . . § 1983 merely provides a mechanism for enforcing individual rights
 27 "secured"elsewhere... '[O]ne cannot go into court and claim a 'violation of § 1983'- for 1983 by itself does not protect anyone against anything.'" Gonzaga
University v. Doe, 536 U.S. at 285, 122 S.Ct. at 2276, citing Chapman v. Houston
Welfare Rights Organization, 441 U.S. 600, 617, 99 S. Ct. 1905 (1979)

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3 In De la Mata v. Puerto Rico Highway and Transp. Authority 920 F. Supp.2d
4 219, 231 (D.P.R. 2012), citing Pagán v. Calderón, 448 F.3d. 16, 26-27 (1st Cir.
5 2006), the court found that "[s]tanding is a jurisdictional principle based on both
6 'constitutional requirements and prudential concerns,' requiring courts to ask
7 'whether each particular plaintiff is entitled to have a federal court adjudicate each
8 particular claim that he asserts.'" The seminal question is whether the
9 Municipality is entitled to the remedy it seeks in this court. "A party has
10 constitutional standing when it has suffered an 'injury in fact' that is 'causally
11 connected to the challenged conduct' and is 'capable of being remedied through
12 suit.' Fideicomiso de la Tierra del Caño Martín Peña v. Fortuño, 604 F.3d 7, 16 (1st
13 Cir. 2010) (citing Pagán v. Calderón, 448 F.3d 16, 27 (1st Cir.2006)) (citing Luján
14 v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130 (1992)). 'The
15 burden of stating facts sufficient to support standing rests with the party seeking
16 to assert federal jurisdiction.' Sutliffe v. Epping Sch. Dist., 584 F.3d 314, 325 (1st
17 Cir. 2009) (quoting Sea Shore Corp. v. Sullivan, 158 F. 3d 51, 54 (1st Cir.
18 1998)), cited in Blades v. Morgalo 743 F. Supp. 2d 85, 91 (D. P. R. 2009).

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21 The Municipality may allege an injury in fact caused to it by the actions of
22 the Commonwealth of Puerto Rico and its officials, if it falls under the scope of the
23 word person or citizen in terms of those who could make a claim against violations
24 under color of state law.
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3 In general, as the defense notes, a political subdivision of a state may not
4 bring a constitutional claim against its creating state. (Docket No. 11). In City of
5 New Rochelle v. Town of Mamaroneck, 111 F. Supp. 2d 353, 368 (S. D. N. Y.
6 2000), citing the case of City of Safety Harbor v. Birchfield, 529 F.2d. 1251 (5th
7 Cir. 1976) which relied on Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473 (1961)
8 the court related that "a municipality is not a 'person for purposes of being sued
9 under §1983, and on the fact that Congress' purpose in passing §1983 was to
10 create a federal remedy for private parties, not government bodies." City of New
11 Rochelle v. Town of Mamaroneck, 111 F. Supp. 2d at 368. The Fifth Circuit in City
12 of Safety Harbor v. Birchfield, 529 F.2d 1251, 1254-55, the Seventh Circuit in
13 Rockford Bd. Of Educ., Sch. Dist. 205 v. Illinois State Bd. Of Ed. 150 F.3d. 686,
14 688 (7th Cir. 1998), and the Eleventh Circuit in Randolph City v. Alabama Power
15 Co., 784 F.2d 1067, 1072 (11th Cir. 1986) have held that municipalities are not
16 "persons" who may seek relief under § 1983. Even in cases where a
17 municipality's ability to sue as a person under 42 U.S.C. §1983 have been
18 recognized, such as in South Macomb Disposal Authority v. Washington Tp. 790
19 F.2d 500 (6th Cir. 1986), the prevailing thought is that municipal entities do not
20 have the power to make claims on violations of privileges and immunities under
21 the Equal Protection or Due Process Clauses of the Fourteenth Amendment of the
22 United States Constitution.

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3 While the court in South Macomb, *supra* does recognize the municipality's
4 standing as a person, it states that "the nature of the relationship between a
5 public corporation and its creating state has led the Court to conclude that a
6 municipal corporation cannot invoke the protection of the Fourteenth Amendment
7 against its own state"⁵, citing City of Newark v. New Jersey, 262 U.S. 192, 196,
8 43 S. Ct. 539, 540, (1923).

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10 Plaintiff relies on the decision in Santiago Collazo v. Franqui Acosta, 721 F.
11 Supp. 385 (D.P.R. 1989), as a precedent for recognizing a municipality's standing
12 to bring about a cause of action under 42 U.S.C. § 1983 against a parent state.
13 In their Response to the Defendants' motion to dismiss (Docket 15) they cite:
14 "[d]iscrimination on the basis of political affiliation of the municipal administration,
15 within the zone of interest" protected by the first amendment, is alleged as the
16 cause of injury, thus making it "fairly" traceable to the challenged action." Based
17 on the Supreme Court's decision in Monell v. Dep't of Social Services of City of
18 New York, 436 U.S. 658, 98 S. Ct. 2018 (1978), the court in Santiago, *supra*
19 decided that if Congress found municipalities to be persons capable of being sued
20 as defendants under §1983, then it must follow that they are also persons capable
21 of suing under 42 U.S.C. §1983. This interpretation can be overreaching since the
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26 ⁵ The Court in South Macomb, *supra*, grants the municipality standing as
27 plaintiff because it was claiming rights as property owner, not substantial rights
28 granted to persons under the United States Constitution, such as due process and
equal protection.

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3 Supreme Court in Monell, *supra*, did not overrule precedents that denied the

4 municipalities recognition as persons; it merely acknowledged the possibility that

5 a person's harm might have been caused by the municipality as a whole. A

6 municipality is capable of providing redress for violations it and its actors make,

7 but unless it is also capable of claiming specific harms caused to it by a person

8 acting under state color, the definition of person cannot be extended to include

9 standing as plaintiff.

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12 In effect, the Municipality of San Sebastián has not specified how the

13 reduction of funds has adversely affected it. Plaintiff states in passing that this

14 has affected its ability to provide goods and services to its citizens (Dockets 1 and

15 9), but it has not given any details as to how or why. If allegations were found to

16 be true, those affected would be the citizens themselves, not the Municipality.

17 Plaintiff would then not be staking a claim on its own behalf, but rather on behalf

18 of its citizens. Title 42 U.S.C. § 1983 when first written, was intended to provide

19 persons suffering a violation at the hands of another acting under state color and

20 not by political subdivisions in a representative capacity.⁶

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24 The plaintiff also claims that both Puerto Rico's legislature in P.R. Laws Ann.

25 tit. 21, § 4001 et. seq. and its Supreme Court have recognized "the maximum

26 ⁶ Ironically, this is the Court's basis for denying standing to the New

27 Progressive Party of Vieques in Santiago Collazo, *supra*. Since the party could not

28 make allegations on how it had been injured, nor which of its members had

suffered any actual or threatened harm, its standing as plaintiff was denied.

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3 degree possible of autonomy" to municipalities for "fiscal and administrative public
4 policy practices", viewing them as individual judicial entities, and not as creatures
5 of the state. (Docket No. 15, pp. 2-3). They would then have standing before the
6 federal courts in a claim against the parent state, since the power conveyed to
7 them grant them an identity equal to a person allowed to request a redress of
8 grievances under 42 U.S.C. § 1983 as intended by Congress. In Hess v. Port
9 Authority Trans-Hudson Corp. 513 U.S. 30, 47, 115 S. Ct. 30 (1994) the Supreme
10 Court of the United States recognized that "ultimate control of every state-created
11 entity resides with the State, for the State may destroy or reshape any unit it
12 creates." While a state may be entitled to grant complete autonomy to its
13 entities, this does not grant the sub-divisions absolute independence from their
14 creator.

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16 In City of Hugo v. Nichols, 656 F.3d. 1251, 1255 (10th Cir. 2011), citing
17 Williams v. Mayor & City Council of Baltimore, 289 U.S. 36, 40, 53 S. Ct. 431
18 (1931) the court stated that "a political subdivision lacks standing to bring in
19 federal court a Fourteenth Amendment equal protection challenge to its parent
20 state's actions." See also Branson School Dist. RE-82 v. Romer, 161 F.3d 619,
21 (10th Cir. 1998). The court also stated that "we have not found... a single case
22 where a court of appeals or the Supreme Court has expressly allowed to proceed
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3 a claim by a municipality against its parent state premised on a substantive
4 provision of the Constitution." City of Hugo v. Nichols, 656 F.3d. at 1257.
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6 CONCLUSION
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8 The Municipality of San Sebastián is not a person empowered to seek
9 redress under 42 U.S.C. § 1983. In view of the above, I recommend that the
10 defendant's motion to dismiss be GRANTED.
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12 Under the provisions of Rule 72(d), Local Rules, District of Puerto Rico, any
13 party who objects to this report and recommendation must file a written objection
14 thereto with the Clerk of this Court within fourteen (14) days of the party's receipt
15 of this report and recommendation. The written objections must specifically
16 identify the portion of the recommendation, or report to which objection is made
17 and the basis for such objections. Failure to comply with this rule precludes
18 further appellate review. See Thomas v. Arn, 474 U.S. 140, 155, 106 S. Ct. 466
19 (1985); Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir.
20 2010); Davet v. Maccorone, 973 F.2d 22, 30-31 (1st Cir. 1992); Paterson-Leitch
21 Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985 (1st Cir. 1988); Borden v.
22 Sec'y of Health & Human Servs., 836 F.2d 4, 6 (1st Cir. 1987); Scott v.
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3 Schweiker, 702 F.2d 13, 14 (1st Cir. 1983); United States v. Vega, 678 F.2d 376,
4 378-79 (1st Cir. 1982).⁷

6 At San Juan, Puerto Rico, this 26th day of August, 2014.

9 S/JUSTO ARENAS
10 United States Magistrate Judge

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27 ⁷Marielia Isla Torres, a third-year student at University of Puerto Rico
28 School of Law, provided substantial assistance in researching and preparing this
report and recommendation.